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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/008,354

11/07/2001

Julio C. Spinelli

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07/12/2006

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EXAMINER

EVANISKO, GEORGE ROBERT

ART UNIT

PAPER NUMBER

3762

DATE MAILED: 07/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/008,354

Applicant(s)

SPINELLI ET AL.

Examiner

Darin R. Roberts

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/1/05; 4/25/05
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: See Continuation Sheet.

Continuation of Attachment(s) 6). Other: 3/25/05; 1/5/05; 2/19/04; 6/6/03; 1/10.03; 3/22/06.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-5, 10-19, 24-27, 30-42, & 46 stand rejected under 35 U.S.C. 102(e) as being anticipated by Nichols et al. (US 6363282 B1, hereinafter "the Nichols et al. patent").

In reference to claims 15, 25, 35 and the applicant's inability to locate the parameters of claim 1 within the Nichols et al. patent, the Nichols et al. patent teaches a centralized management system comprising a network (see abstract & column 13, lead lines 25-34), as well as a the use of a personal computer capable of acting as a server (see column 9, lead lines 23-28). Said computer is also coupled to a network including at least one prescription system for prescribing at least one programmable parameter of a medical device based upon at least one characteristic of a patient, and a medical device programmer coupled to the network and configured to communicate at least one characteristic of a patient to the central server via the network, to receive at least one programmable parameter from the central server via the network (see column 7, lead lines 39-54). A server of the Nichols et al. patent is also capable of programming a medical device using the at least one programmable parameter (see column 14, lead lines 25-38). Because the Nichols et al. patent communicates with a network it must inherently possesses a network communication device.

In reference to the quotes from the Nichols et al. patent provided by the applicant, none of them appear to teach away from the receiving a programmable parameters, especially considering the fact the an update can also be defined as a programmable parameter.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 6-9, 20-23, 28, 29 & 43-45 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Nichols et al. (US 6363282 B1) in view of Haller (US 6804558 B2).

The examiner would like to remind the applicant that a patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Meaning, the purpose of a 103 (a) obviousness rejection is not to use one patent to compensate for the defects of another, but rather to prove that a particular combination would have been obvious at the time the applicant's invention was created. Thus the examiner contends that claims 6-9, 20-23, 28, 29, & 43-45 still lack patentability based upon the rational provided in the previous office action.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darin R. Roberts whose telephone number is (571)272-5558. The examiner can normally be reached on 7:30am to 4:00pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3762

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Darin Roberts
Patent Examiner
Art unit 3762

D. R.


Jeffrey Jastrzab
Primary Examiner
Art unit 3762
7/9/06